IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

WP(C).No. 32233 of 2007(K)

AGAINST THE ORDER DATED 26/09/2007 IN IA.1357/07 IN OS.113/1998 of SUB COURT,KOTTARAKKARA

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PETITIONER:

P.T.RAJAN BABU, S/O.LATE
THOMAS VAIDYAN, JAYABHARATHAM BUNGLOW,
ARAMPUNNA MURI, PUNALUR VILLAGE, PATHANAPURAM TALUK.

BY ADV. SRI.RAJA VIJAYARAGHAVAN
SRI.R.RENJITH

RESPONDENTS:

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1. KUNJAMMA THOMAS, W/O.LATE
THOMAS VAIDYAN, JAYABHARATHAM BUNGALOW,
PUNALUR VILLAGE, PATHANAPURAM TALUK.

2. P.T.CHANDRA BABU, S/O.LATE THOMAS VAIDYAN, DO.

3. P.T.SUBHASH BABU, DO. DO.

4. P.T.ROY BABU, DO. DO.

5. P.T.PRAKASH BABU, DO. DO.

6. P.T.JOSE BABU, DO. DO.

7. P.T.USHAKUMARY, D/O.LATE
THOMAS VAIDYAN, RAJA NILAYAM,KATTANAM, KAYAMKULAM.

8. P.T.SANTHOSH BABU, S/O.LATE
THOMAS VAIDYAN, JAYABHARATHAM BUNGLOW,
PUNALUR VILLAGE, PATHANAPURAM TALUK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.32233 of 2007

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Dated this the 30th day of October, 2007.

JUDGMENT

This Writ Petition is filed challenging the order of the Subordinate Judge, Kottarakkara in I.A.No.1357 of 2007 in O.S.No.113 of 1998. By the said order, the court below permitted production of the original of Ext.B2 and there are some observations regarding the genuineness or otherwise of the same. It has to be stated that an application was filed for production of the original as contemplated under Section 66 of the Evidence Act. The defendants only produced a copy and when the evidence was almost closed, produced the original of the Will and reception of which was opposed by the other side. The conduct of the defendants in not producing the original of the Will when it was directed to be produced has to be deprecated.

2. But whatever it may be the whole decision of the suit depends upon the validity, genuineness or correctness of the Will which is in dispute now, which is admitted as a secondary

evidence as Ext.B2. Therefore, though the conduct of the party is not above par, since it is a document which has to be considered for a proper resolution of the disputes between the parties, I do not want to interfere with the order of the learned Subordinate Judge in permitting the defendants to produce the original of Ext.B2. Needless to say that the mere production of a registered Will does not amount to a proof of that document and statutory compliance and requirements contemplated under Section 63 of the Indian Succession Act and Section 68 of the Evidence Act has to be complied with before considering that document as genuine, proper or otherwise. Since it is a belated production, the plaintiffs in the suit are entitled to recall any of the witnesses and adduce evidence challenging the genuineness of the same and the court has to consider the same in accordance with law.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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